

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PAULA RUSH

v.

AMERICAN HOME MORTGAGE, INC.
et al.

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Civil Action WMN-07-CV-0854

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MEMORANDUM

Plaintiff filed her Complaint in this action on April 3, 2007, seeking both rescission of her mortgage with Defendants and damages. The Court administratively closed the case in October 2007 due to the dismissal of several named Defendants and the bankruptcy proceedings of the remaining Defendants. The Court reopened the case in August 2009 on Plaintiff's motion and in December 2009, the Court denied in part and granted in part the remaining Defendants' Motion to Dismiss. The Court denied several of Plaintiffs' claims without prejudice to allow Plaintiff to seek leave to amend. On November 13, 2009, the Substitute Trustee for Rush's Deed of Trust instituted a foreclosure action with notice provided to Plaintiff on December 7, 2009. The Substitute Trustee notified Plaintiff of a pending foreclosure sale scheduled for January 8, 2010. In response, Plaintiff filed this Emergency Motion for Temporary Restraining Order, Paper No. 51, on January 8, 2010, asking this Court 1) to prevent the foreclosure sale of the Subject Property; 2) to

obtain discovery; 3) to have this Court "take jurisdiction of the foreclosure action;" and 4) for this Court to dismiss the proceeding currently pending in Harford County Circuit Court, Maryland, Case No. 12-C-09-003948. Defendants responded to Plaintiff's motion and the time for Plaintiff's Reply is past. Upon review of the pleadings and the applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6) and that Plaintiff's Emergency Motion for Temporary Restraining Order will be denied as set forth below.

Defendants informed the Court in their Opposition that the Substitute Trustee for Rush's Deed of Trust has cancelled the foreclosure sale scheduled for January 8, 2010, and that there is no other foreclosure sale date scheduled for the property. For this reason, the Court finds that Plaintiff's Motion for a Temporary Restraining Order is moot and will be denied.

Plaintiff's request for discovery is premature and will also be denied. Plaintiff recently sought leave to amend her Complaint, delaying Defendants' Answer and the issuance of the Court's scheduling order. Because the scheduling order has not yet been issued, pursuant to Local Rule 104.4, the discovery conference required to take place prior to the beginning of discovery under Federal Rules of Civil Procedure 26(d) and 26(f) has yet to occur. Plaintiff has provided no good reason as to why discovery must proceed prior to the normal course of events.

Finally, Plaintiff requested this Court to take jurisdiction over the State court foreclosure action and dismiss it. Plaintiff has provided no grounds by which this Court could dismiss a state court case. Instead, 28 U.S.C. § 2283 permits a U.S. Court to only "grant an injunction to stay proceedings in a State court" under three circumstances: 1) when expressly authorized by Act of Congress; 2) where necessary in aid of its jurisdiction; or 3) to protect or effectuate its judgments. See also Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 630 (1977). Here, there is no Act of Congress authorizing a stay nor has this Court rendered a judgment in need of protection. Thus, the Court may only institute a stay if it is necessary in order to aid its jurisdiction.

The Court does not find that a stay is warranted here to aid its jurisdiction. Defendants argue that the foreclosure case was initially instituted against Rush in December 2006 and that this Court would not be, therefore, protecting its jurisdiction by staying the State court foreclosure action. In reviewing the docket of the December 2006 foreclosure case, it appears that the court dismissed it without prejudice for lack of prosecution in September 2008. The recent foreclosure case, however, was instituted in November 2009, well after Plaintiff filed her case here and Defendants' argument seems groundless. Nonetheless, Plaintiff's only claims currently before the Court

following Defendants' motion to dismiss that would possibly be affected by the foreclosure action are her fraud claim and her claim for violation of the Maryland Consumer Fraud and Deceptive Practices Act, both State court claims. The State court is better positioned to decide these claims than this Court. Moreover, while Plaintiff has moved for leave to amend her Complaint to state a rescission claim under the Truth-in-Lending Act, this claim is not yet properly before the Court so there is no jurisdiction to protect. Finally, Plaintiff's only federal claims upon which this Court has allowed her to proceed may result only in an award of damages, which would be unaffected by the State foreclosure action. Thus, this Court has no grounds by which to "take jurisdiction of the foreclosure action" or to stay or dismiss that action.

For the foregoing reasons, Plaintiff's Emergency Motion for Temporary Restraining Order will be denied. A separate order will issue.

_____/s/_____
William M. Nickerson
Senior United States District Judge

February 4, 2010